

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FRED MCBRIDE,

Plaintiff,

v.

Case No. 22-cv-462-bhl

MICHAEL LUENEBURG,

Defendant.

ORDER

Plaintiff Fred McBride, who is representing himself, is proceeding on an Eighth Amendment claim that Defendant used excessive force at the Waupun Correctional Institution on January 21, 2022. Dkt. No. 7. Discovery closed February 6, 2023; and dispositive motions are due March 9, 2023. Dkt. No. 14. On January 3, 2023, McBride filed a motion to compel discovery. Dkt. No. 15. McBride states that defense counsel failed to produce: (1) photographs taken of him and Defendant following the incident; (2) Defendant's "full report" from the hospital; and (3) unredacted hallway videotape footage. *Id.*, ¶¶1-3. McBride claims the evidence is relevant and not sensitive. *Id.*, ¶4. He states, "I don't know why the defendant would withhold this evidence unless they are making an effort to hinder this legal process." *Id.*

In response, defense counsel explains that the institution did not find any photos responsive to the discovery request, but he has asked them to look again, and if they exist, they will be produced. Dkt. No. 17. Further, for security reasons, Defendant's "full report" from the hospital cannot be produced because of the high risk of personnel files being used to threaten, harass, or attempt to blackmail employees and their families. *Id.* And although there are small skips in the

hallway videotape footage, the video has not been edited. *Id.* Defense counsel explains that it's unclear what causes the skipping, but it could be that the recording briefly stopped due to lack of movement detected or the automatic computerized merging of smaller video files into the bigger file. *Id.*

Based on Defendant's responses, the Court is satisfied that he has fulfilled his discovery obligations. Defendant cannot produce what cannot be located. If defense counsel does find photos, they should be produced as soon as possible. The hallway videotape footage was not edited in anyway and McBride already has the original version of the video. And personnel files cannot be produced because of the high risk of misuse and its security implications. *See e.g. Medrano v. Boland*, 841 F. App'x 1008, 1010 (7th Cir. 2021). McBride also did not timely reply to his motion to compel raising any issues with Defendant's responses. The Court will therefore deny the motion to compel.

IT IS THEREFORE ORDERED that Plaintiff's motion to compel (Dkt. No. 15) is **DENIED**. If defense counsel finds photos responsive to McBride's request, they should be produced as soon as possible.

Dated at Milwaukee, Wisconsin on February 13, 2023.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge